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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LAURA STRAUS et al., Plaintiffs and Appellants, v. HOUSING AUTHORITY OF THE CITY OF LOS ANGELES et al., Defendants and Respondents.	B287470 (Los Angeles County Super. Ct. No. BC647413)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark V. Mooney, Judge. Dismissed.

Neighborhood Legal Services of Los Angeles County, David Pallack, Lena Silver, and Andrea Ringer, for Plaintiffs and Appellants.

Joseph L. Stark & Associates and Joseph L. Stark, for Defendants and Respondents.

Plaintiffs Laura Straus (Straus), John DeNava (DeNava), Alex Ortega (Ortega), and the Los Angeles Tenants Union (collectively, plaintiffs) either are or represent residents of apartments owned by the Housing Authority of the City of Los Angeles (HACLA). Although many HACLA-owned housing units are subsidized by governmental rental assistance payments administered by HACLA, the individual plaintiffs in this action live in "market-rate" units that have never been subsidized. We consider whether plaintiffs have a viable claim that HACLA violated the City of Los Angeles's (the City's) rent stabilization ordinance (RSO) when it notified plaintiffs that rents for their market-rate units would be raised by more than three percent in 2016—notwithstanding HACLA's later voluntary concession that it would limit the raise in rent to an amount permitted by the RSO.

I. BACKGROUND

A. Legal Background: The RSO

The RSO is a "vacancy decontrol/recontrol" ordinance.[1] Unlike more restrictive approaches to rent control, it permits landlords to raise the rent for a unit by any amount when an existing tenant voluntarily vacates. (Los Angeles Mun. Code, § 151.06(C).) Annual rent increases for an existing tenant, however, may not exceed a percentage of the prior year's rent

[1] "A moderate type of rent regulation, known as vacancy decontrol-recontrol, allows a landlord to establish the initial rental rate for a vacated unit but, after the rental rate is fixed, limits rent increases as long as the tenant occupies the unit." (*Mosser Companies v. San Francisco Rent Stabilization & Arbitration Bd.* (2015) 233 Cal.App.4th 505, 510.)

calculated based on the Consumer Price Index, which for our purposes in this appeal, translates to a cap of three percent.[2]

The provisions of the RSO are generally applicable to "rental units." But the City Council has exempted certain categories of housing from the RSO by tailoring the ordinance's rental units definition. One such exemption—the one pertinent here—is for "[h]ousing accommodations owned and operated by [HACLA], or which a government unit, agency or authority owns, operates, or manages and which are specifically exempted from municipal rent regulation by state or federal law or administrative regulation, or housing accommodations specifically exempted from municipal rent regulation by state or federal law or administrative regulation." (Los Angeles Mun. Code, § 151.02.) This exemption, however, is subject to its own exception. Under the exception-to-the-exemption, housing exempted from RSO regulation again becomes subject to the terms of the RSO (including its three percent cap on rent increases) "once the government ownership, operation,

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[2] "The annual rent increase adjustment shall be based on the Consumer Price Index – All Urban Consumers for the Los Angeles-Long Beach-Anaheim-SMSA averaged for the previous twelve (12) month period ending September 30 of each year. It shall reflect the change in the Consumer Price Index over the previous consecutive twelve (12) month period expressed as a percentage and rounded off to the nearest whole number. If the calculated adjustment is three percent (3%) or less, the Department shall set the annual rent increase adjustment at three percent (3%) but, if the calculated adjustment is eight percent (8%) or greater, the Department shall set the annual rent increase adjustment at eight percent (8%)." (Los Angeles Mun. Code, § 151.07(A)(6).)

management, regulation or rental assistance is discontinued." (Los Angeles Mun. Code, § 151.02.)

B. The Disputed Rent Increase and Plaintiffs' Lawsuit

As alleged in their first amended complaint, plaintiffs Straus, DeNava, and Ortega are 71, 89, and 70 years old, respectively. Each has resided at the Reflections on Yosemite Apartments (Yosemite Apartments) for at least a decade, and each lives on a fixed income. Eighty percent of the rental units in the Yosemite Apartments, including those leased by Straus, DeNava, and Ortega, do not receive any federal, state, or local rent subsidies. The individual plaintiffs themselves have never received rent subsidies.

HACLA purchased Yosemite Apartments in 1995. The complex is one of approximately 50 buildings owned directly by HACLA containing unsubsidized rental units. HACLA delegates management of Yosemite Apartments to a private management company.

In June 2016, the management company notified the individual plaintiffs their monthly rents would be increased to $1,000 beginning in September 2016. For the individual plaintiffs, this amounted to an increase of between 32 and 65 percent. Sometime before September 2016, plaintiffs and other tenants organized and were able to persuade HACLA to reduce the rent increases to six percent. Subsequently—but still before the rent increases took effect—the legal aid organization representing plaintiffs in this matter sent a letter to the management company contending the six percent increase violated the RSO. Return correspondence from a representative of HACLA's management company maintained HACLA is exempt

from the RSO but agreed to increase rents at Yosemite Apartments by only three percent, which is the maximum the RSO would allow.[3]

Plaintiffs sued HACLA and its CEO, Douglas Guthrie. The gist of plaintiffs' suit was that the RSO's limitations on rent increases apply to their apartment units because the RSO's exception for HACLA-owned property should apply only in case of HACLA tenants receiving governmental rental assistance payments, not tenants like themselves who do not. Straus and DeNava sought damages, pursuant to Los Angeles Municipal Code section 151.10(A), of three times the amount by which the initially proposed rent increase exceeded the maximum allowed under the RSO. All plaintiffs sought a declaration that HACLA's unsubsidized apartments are subject to the RSO and an injunction requiring HACLA to comply with the RSO.

HACLA demurred to plaintiffs' complaint, arguing the RSO did not apply to plaintiffs' rental units—units that were never subsidized by rental assistance payments. Emphasizing the plain meaning of the aforementioned exception-to-the-exemption (housing is governed by the RSO "once the government . . . rental assistance is discontinued"), HACLA contended plaintiffs could not invoke the exception because plaintiffs' rental units had *never* been subsidized and rental assistance cannot be "discontinued"

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[3] The original correspondence is not included in the appellate record. Plaintiffs allege HACLA "also announced publicly that it had previously increased the rents in five other HACLA-owned senior residential buildings beyond amounts permitted under the RSO, and that HACLA had decided to reduce the rent increases in those buildings to 3% as well."

when it was never offered in the first place. The trial court sustained HACLA's demurrer and gave plaintiffs leave to amend.

In a first amended complaint, plaintiffs added a cause of action for violation of state and federal constitutional rights to equal protection. They contended HACLA's interpretation of the RSO irrationally and arbitrarily denies protection from high rent increases to tenants in HACLA-owned buildings who have never received rental assistance while extending such protection to tenants in HACLA-owned buildings who previously received rental assistance but no longer do.

HACLA (and its CEO) demurred to the first amended complaint. It argued plaintiffs' equal protection challenge was meritless because there is no suspect classification at issue and the RSO, as HACLA construed it, satisfied the permissive rational basis level of scrutiny that applies to equal protection challenges in the absence of a suspect class. HACLA additionally argued applying the RSO's rent control provisions to HACLA-owned properties would violate Health and Safety Code section 34320, which prohibits local governments from regulating "the acquisition, operation, or disposition of property by other public bodies." The trial court sustained HACLA's demurrer without leave to amend and dismissed the action—a dismissal from which plaintiffs now appeal.[4]

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[4] The appellate record does not include a reporter's transcript of the demurrer hearing and the trial court did not issue a written ruling. Because we dismiss the appeal on other grounds, we need not resolve whether the appellate record is adequate to affirmatively demonstrate error.

II. DISCUSSION

We have no live controversy to resolve in this appeal because we can provide no effective relief to plaintiffs. HACLA has already voluntarily done that on its own, plaintiffs are not entitled to damages as alleged, and there is insufficient basis to conclude the alleged wrong (an increase in rent purportedly beyond the limits of the RSO) is likely to recur and evade review. The case is therefore moot.

A. Standard of Review

We review an order sustaining a demurrer de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory. (*T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 162; *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; *Morales v. 22nd Dist. Agricultural Assn.* (2016) 1 Cal.App.5th 504, 537.) "We will affirm an order sustaining a demurrer on any proper grounds, regardless of the basis for the trial court's decision." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1468; accord, *E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, 504 & fn. 2 [validity of the trial court's action, not the reason for its action, is what is reviewable].)

B. There Is No Justiciable Controversy on Appeal

Plaintiffs concede HACLA agreed to rescind its initially proposed rent increases for September 2016 and limit the increase to three percent, an amount within RSO limits (assuming for argument's sake the RSO applies). In light of HACLA's agreement on this issue that is at the heart of

plaintiffs' first amended complaint, an appellate ruling in their favor would not provide them with any effective relief unless they have stated a proper claim for damages or can make a showing that their otherwise moot case presents "an important question that is likely to recur yet evade review" (*California Charter Schools Assn. v. Los Angeles Unified School Dist.* (2015) 60 Cal.4th 1221, 1233 (*California Charter*)).[5] (*Simi Corp. v. Garamendi* (2003) 109 Cal.App.4th 1496, 1503 ["A case becomes moot when a court ruling can have no practical impact or cannot provide the parties with effective relief"].) Neither is the case.

Section 151.10(A) of the Los Angeles Municipal Code provides that "[a]ny person who demands, accepts or retains any payment in excess of the maximum rent or maximum adjusted rent in violation [of the RSO] shall be liable in a civil action to the person from whom such payment is demanded, accepted or retained for damages of three times the amount by which the payment or payments demanded, accepted or retained exceed the maximum rent or maximum adjusted rent which could be lawfully demanded, accepted or retained together with reasonable attorneys' fees and costs as determined by the court."

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[5] Plaintiffs argue there are other protections provided by the RSO, e.g., a requirement of good cause for eviction and a requirement to maintain adequate housing standards, that are relevant to mootness. In this litigation, HACLA has not disputed that its voluntary agreement to limit rent increases to RSO-permissible amounts is exclusive of these other RSO protections and HACLA maintains on appeal that the case is moot. Under the circumstances, there appears to be no dispute that these other RSO protections would apply as a matter of voluntary agreement and they are not relevant to our mootness analysis.

Assuming for the sake of argument that HACLA is subject to the RSO, plaintiffs are entitled to damages only if HACLA's June 2016 notice of a rent increase to be implemented in September 2016 constituted a "demand" for rent.

The RSO does not define "demand," but the law distinguishes generally between notice of a rent increase and a demand for payment. Civil Code section 1942.4, subdivision (a), for example, distinguishes between "demand[ing] rent" and "issu[ing] a notice of a rent increase" in imposing conditions applicable to both. The Court of Appeal's decision in *Lyles v. Sangadeo-Patel* (2014) 225 Cal.App.4th 759 evinces the same distinction. In that case, the court construed a different provision of the RSO prohibiting landlords from "'demand[ing]'" rent without first serving a certain document and recognized, as a general matter, that rent may accrue even when a landlord cannot demand payment. (*Id.* at pp. 766-767.) The court's observation, which distinguishes between sums owed and sums demanded, further exemplifies the distinction made by the Civil Code.

Nothing in the RSO's legislative history suggests "demand" should be construed more broadly in this case. Furthermore, construing "demand" to exclude a mere notice of a rent increase is rooted in sound policy: Tenants who face unaffordable rent increases are highly motivated to negotiate a reduction before the rent comes due, and this construction avoids imposing immediate liability, including treble damages, on landlords who might otherwise be willing to negotiate. Because HACLA's June 2016 letter was not a demand for rent for purposes of Los Angeles Municipal Code section 151.10(A), plaintiffs cannot make out a case for damages.

Without a viable claim for damages, plaintiffs are left with only the argument that we should make an exception to the mootness doctrine in their case. They contend they have a "'reasonable expectation' that future rent increases that violate [the RSO] 'will probably recur'" because HACLA has maintained in correspondence that "it is not subject to [the RSO] and that it believes it can raise rents by any percentage at any time . . . ." This invocation of the well-established mootness exception for cases presenting an important question that is likely to recur yet evade review (*California Charter*, *supra*, 60 Cal.4th at p. 1233) does not suffice for two reasons.

First, there is nothing in the record permitting a reasonable conclusion that it is likely the question of whether HACLA "market rate" units are subject to the RSO will recur. Yes, HACLA has not definitively conceded its legal position is untenable, but it fully acquiesced in plaintiffs' demands to reduce the rent increases to RSO-permissible levels. Indeed, not only that, but as plaintiffs acknowledge in the first amended complaint, HACLA went further and "announced publicly that it had previously increased the rents in five other . . . senior residential buildings beyond amounts permitted under the RSO, and . . . decided to reduce the rent increases in those buildings to 3% as well." There is also no indication that the question presented in this case has ever previously been presented to a court but evaded a disposition on the merits. Rather, this case, so far as plaintiffs' record reveals, is the first time the issue has arisen in court, and a single occurrence is hardly a basis for an inference of future probability.

Second, and relatedly, there is no reason to conclude the issue would evade review if HACLA were ever to implement rent

increases beyond three percent annually for market rate units. Indeed, it seems the only way such an issue would evade review upon another threatened suit from plaintiffs (or similarly situated others) is if HACLA again backed down and limited any hypothetical increase to the three percent the RSO permits, as happened here.

The issues presented by the appeal present merely an abstract legal dispute; we can provide plaintiffs no effective relief even if their legal theory were correct. The case is moot.

DISPOSITION

The appeal is dismissed. Respondents shall recover their costs on appeal.

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BAKER, J.

We concur:

RUBIN, P. J.

MOOR, J.